IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.6.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.993 of 1999

Shanmugham .. Appellant

vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
(TNSTC), Villupuram Division,
Villupupram.
(Cause Title accepted-vide
order dated 29.7.1999 in
C.M.P.11714 of 1999) .. Respondent

Civil Miscellaneous Appeal against the award and decree dated 22.1.1999 in M.C.O.P.No.23 of 1998 on the file of the Motor Accidents Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate's Court), Cuddalore.

For appellant : Mr.R.Sunil Kumar for
M/s.R.Yashod Vardhan

For respondent: Ms.Geetha for M/s.Rajnish Pathiyil

JUDGMENT

This appeal is filed by the claimant against the award and decree dated 22.1.1999 in M.C.O.P.No.23 of 1998 on the file of the Motor Accidents Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate's Court), Cuddalore.

2. In the claim petition, a sum of Rs.1,00,000/- was claimed as compensation under various heads for the injuries sustained by the claimant in the accident that happened on 12.6.1994 at 9.00 hours at Cuddalore, on account of the rash and negligence on the part of the driver of the bus belonging to the respondent-Transport Corporation. The appellant-claimant was driving a motor-cycle and at that time, he was hit by the bus belonging to the Transport Corporation.

3. The Transport Corporation resisted the claim on the ground that the accident had occurred only due to the negligence on the part of the claimant.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

4. Before the Tribunal, the claimant examined himself as P.W.1 and marked Exs.A-1 to A-9. The Transport Corporation examined the driver of the bus as R.W.1 and no document was marked on the side of the Transport Corporation.

5. The Tribunal, on consideration of the oral and documentary evidence available on record, concluded that the accident had occurred only due to the negligence on the part of the driver of the bus belonging to the Transport Corporation and awarded a sum of Rs.15,000/- (Rs.5,000/- for the injuries sustained by the claimant and Rs.10,000/- towards medical expenses) as compensation with 12% interest. Not satisfied with this award, the claimant has preferred this appeal.

6. This is an appeal by the claimant. The Tribunal, on consideration of the oral and documentary evidence, held that the accident occurred only due to the negligence on the part of the driver of the bus belonging to the Transport Corporation. Such an issue is not disputed by the Transport Corporation now.

7. The Tribunal however did not grant the medical expenses in full as claimed through Ex.A-8 series of bills, on the ground that the same have not been proved by examining a Doctor. The learned counsel for the appellant/claimant would submit that the medical bills submitted are relatable to the various treatments given to him consequent to the accident, at different hospitals by different Doctors. Therefore, it was not possible for the claimant to examine all or any one of the Doctors. If the claimant examines one Doctor, the other Bills will be rejected on the ground that the concerned Doctor has not been examined. In such a situation, only the Bills were produced. The bona-fides of the medical bills are not questioned. In this regard, learned counsel for the appellant-claimant relied upon paragraph 6 of the judgment of the Jaipur Bench of the Rajasthan High Court reported in AIR 1986 Rajasthan 37 (M/s.Pokarmal Ram Narayan vs. Ram Saran), which reads as follows:

> "6. In my considered opinion, there cannot be any general rule of thumb unless medical expert is produced even unrebutted evidence of the injured cannot be accepted."

8. On the merits of the claim, on going through the medical bills and records, it is seen that Ex.A-1 dated 12.6.1994 is the accident register copy of District Headquarters Hospital, Cuddalore, Ex.A-2 is the discharge summary and medical advice dated 11.7.1994 issued by Miot Hospitals Limited, Chennai, Ex.A-3 dated 12.9.1994 is the discharge summary issued by Eastcoast Hospitals Ltd., Pondicherry, Ex.A-4 dated 18.8.1994 is discharge summary issued by JIPMER Hospital, Pondicherry, Ex.A-5 is the out-patient record issued by the JIPMER Hospital, Pondicherry, Ex.A-6 is the O.P. receipt issued by Directorate of Health and Family Welfare Services, Government Hospital, Pondicherry, Ex.A-7 series are the prescription and treatment particulars issued by Eastcoast Hospitals, Pondicherry and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

other hospitals for the injury sustained by the claimant, Ex.A-8 series are the medical bills and consolidated statement of claim for medical expenses made by the appellant/claimant and Ex.A-9 is the certified copy of F.I.R. Thus, from the original medical records filed before the Tribunal, which are available before this Court, it is seen that initially, on sustaining injuries, the appellant-claimant got himself treated at the Government Hospital, Cuddalore on 12.6.1994, where he was diagnosed to be suffering from extensive laceration over dorsum of right foot with avulsion of skin 12 cm x 3 cm x 1/2 cm fresh bleeding. Thereafter, the claimant was treated at Miot Hospitals Limited, Chennai where he was treated for "lacerated injury with deglowing injury over the Rt. foot, there was loss of skin over the entire dorsum of the foot with extensor tendons of the toes completely divided and lacerated except the tendon to the little toe". The appellant-claimant was also subsequently treated at JIPMER Hospital, Pondicherry and Eastcoast Hospitals Ltd., Pondicherry as stated above.

9. In support of the claim petition, the claimant has filed the original admission/discharge particulars in the various Hospitals and the total amount expended towards the treatment during the relevant period comes to Rs.54,280/-, which has also been filed in the form of a detailed chart marked as Ex.A-8 medical bill series.

10. The accident in question is not disputed. The liability of the respondent-Transport Corporation is also not disputed. The only issue on which the Tribunal rejected the claim of the claimant is that the claimant has not examined the Doctor in support of the cost of medical treatment.

11. On going through the abovesaid original medical documents filed before the Tribunal, which are available before this Court, it is clear that the records are pertaining to the appellant/claimant only and the treatment is in respect of the injuries sustained on 12.6.1994. The appellant/claimant examined himself as P.W.1 and produced all these medical records and Bills. Once the injuries are admitted and the respondent-Transport Corporation is found fault for the alleged accident, insofar as the medical treatment of the claimant is concerned, the only factor that has to be seen is whether the Bills produced by the claimant are genuine or not. It is not contended that these medical records are created or concocted only for the purpose of the claim. On the contrary, on going through the records, it is clear that all the treatments relate to the injuries caused to the appellant-claimant due to the accident that occurred on 12.6.1994.

12. An injured-claimant is entitled to sufficient medical treatment so as to restore himself to the original position as he would be but for the accident. In this case, the claimant had first approached the Government Hospital for first-aid and thereafter approached specialist Doctors in various hospitals for further treatment in respect of the injuries suffered on 12.6.1994. The Tribunal should have examined the relevant medical records and Bills if there was any doubt or called for details.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

13. The Tribunal apparently passed the order rejecting a portion of the claim, on the ground that there is no evidence of a Doctor to support the medical bills of the claimant. The claim on medical bills should have been accepted in its entirety or rejected in full. The medical records clearly establish that treatment was given to the appellant-claimant only in respect of the injuries suffered by the claimant due to the accident caused by the negligence on the part of the driver of the bus belonging to the Transport Corporation on 12.6.1994. The proceedings before the Tribunal are summary in nature and based on records and documents. Strict rules of evidence cannot be made applicable to the proceedings before the Tribunal. The Tribunal has got power to device its own method of conducting the proceedings and while appreciating the claims, it has got the power to look into the documents and satisfy itself about the bona-fides of the claim.

14. Motor accident claim is a remedy for the cause and effect of an accident. What will be the appropriate remedy has to be decided in a just and equitable manner. The victim of an accident who suffers injury is entitled to claim compensation for all necessary medical treatment to undo the damage done and the person responsible is liable for the same. The victim has the right to choose the appropriate and necessary medical treatment that may be required. In a case of injury, different Doctors may have to treat a patient, like orthopaedician, plastic surgeon, vascular surgeon, general physician, dentist, neurologist, eye specialist and the like, depending on the nature of injury. When such is the case, the nature of treatment, the period of treatment and the method of treatment will depend upon the response of the patient. During the course of treatment, the patient will be referred to different specialists when required. Sometimes, patient is treated and asked to undergo further treatment in any hospital near the home town of the victim. In such a situation, it is not uncommon that the patient is treated by more than one Doctor in different hospitals from time to time. It will be a travesty of justice if the victim is asked to present each and every Doctor only to prove that the particular Doctor had treated the victim. In motor accident claim cases, unless otherwise specifically required, the Doctors are summoned to testify the nature of injury that the victim had suffered and to assess the percentage of disability. This is not the issue in the present case. All that the Tribunal wants the claimant to prove the medical bills is by testimony of Doctor. When the medical bills speak for themselves coupled with the medical records produced, details of which have been extracted above, there is no room to doubt the nature of treatment given and the expenses incurred thereon. The testimony of one Doctor to prove the treatment taken in different hospitals by different Doctors, will also be rejected on the plea that the Doctor who is examined on oath, is not the person who treated the victim on all occasions. To ask each one of the Doctors who treated the victim, to be summoned to testify, will result in defeating the object of the Motor Vehicles Act meant to mitigate the suffering of the accident victim.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. As regards the nature of the proceedings before the Tribunal, the Rajasthan High Court, in the case of Shrwan Kumar vs. Rajasthan State Road Transport Corporation (1995 ACJ 337), has observed in paragraph 17 as follows:

> "17. ... In support of the proposition that the provisions of the Evidence Act do not apply strictly to the proceedings, he has relied upon decision of the Delhi High Court in New India Assurance Co. Ltd. vs. Saloni Dargan, 1990 ACJ 127 (Delhi). In this decision, the Delhi High Court has taken the view that the strict provisions of Evidence Act are not applicable in proceedings under the Motor Vehicles Act and the procedure is a summary procedure and any document having some probative value and the genuineness of which is not in doubt can be looked into by the Tribunal for getting preponderance of probable versions. This view commends itself to me. To my mind, provisions of the Evidence Act do not apply strictly to cases tried by the Motor Accidents Claims Tribunal, for the reason that the proceedings before the learned Tribunal are summary in nature."

16. Further, in 1991 ACJ 230 (Rajasthan State Road Trans. Corpn. vs. Devilal), it has been held by the Rajasthan High Court as follows:

> "8. Tribunals have been established for the prompt disposal of claim cases. The limitation for filing claim cases is six months. Fixed court-fee of Rs.10/- is required to be paid. Rule 17, Rajasthan Motor Accidents Claims Tribunal Rules, contemplates disposal of claim cases in one hearing. It has been observed in N.K.V.Bros.(P) Ltd. vs. M.Karumai Ammal, 1980 ACJ 435 (SC) at page 436, that the Tribunal should not succumb to niceties, technicalities and mystic maybes. Section 110-C, Motor Vehicles Act, 1939 provides that in holding enquiry under section 110-B of the Act, the Claims Tribunal would follow such summary procedure as it thought fit. While interpreting similar words used in section 11(1) of the Industrial Disputes Act, 1947, it has been observed in Grindlays Bank vs. Central Government Industrial Tribunal, AIR 1981 SC 606 at page 608, para 7, as under:
>
> > "The words 'shall follow such procedure as the arbitrator or other party may think fit' are of the widest amplitude and confer ample power on the Tribunal and other

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

authorities to devise such procedure as justice of the cas demands."

It has further been observed in para 8 that object of giving such wide power is to mitigate the rigour of the technicalities of the law and to achieve the object of the effective investigation and settlement of disputes. Strictly speaking, the provisions of the Evidence Act are not applicable before the Tribunal. Reference to K.Gopalakrishnan vs. Sankara Narayanan, 1969 ACJ 34 (Madras) and Pandit Ram Saroop vs. Balbir Singh, 1988 ACJ 500 (Delhi), may be made here. Thus the certified copy of the post-mortem report, paper No.C.17/2-3, has rightly been taken into consideration by the Tribunal without examining the doctor who prepared it."

17. In the present case, Insurance Company could have examined an expert if they doubted the truth or veracity of the documents. In any event, the First appellate Court is a final Court on facts. It is a continuation of original proceedings and therefore, on going through the documents, this Court finds no reason to disbelieve the documents relied upon by the claimant.

18. The attempt of the Tribunal in a case of injury is to see that the victim of the road accident is placed as nearly as possible in the same situation or status as he would have been had there been no road accident. It is also the duty of the Tribunal to ensure that the tort-feasor is made to pay just and reasonable compensation in the form of the award. The High Court of Gujarat has taken such a view in the case of Oriental Insurance Co. Ltd. vs. Abbas Kasambhai Ghanchi (1999 ACJ 1030).

19. In the matter of compensation and in motor accident cases, the Supreme Court in the case of Concord of India Ins. Co. Ltd. vs. Nirmala Devi (1980 ACJ 55) held as follows:

"2. ... The jurisprudence of compensation for motor accidents must develop in the direction of no-fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales. ..."

20. In 1980 ACJ 435 (SC) (N.K.V.Bros.(P)Ltd. vs. Karumai Ammal), the Supreme Court held as follows:

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

> Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by Tribunals. We must remember that judicial tribunals are Stage organs and Article 41 of the Constitution lays the jurisdictional foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of Tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard." (emphasis supplied)

21. In the present case, the Tribunal has granted Rs.5,000/- towards injuries sustained by the claimant and Rs.10,000/- towards medical expenses and passed an award for a sum of Rs.15,000/-. There is no reason given as to why the Tribunal has come to the conclusion that in respect of medical expenses, a sum of RS.10,000/- alone should be awarded and not in it's entirety, in spite of medical records and bills.

22. There is no question of granting any amount towards medical expenses as "gratis". But, in this case, the claimant has furnished all the relevant medical records in originals and supported the claim petition. It is for the Tribunal either to accept the same in full or reject the same. There is no question of the Tribunal making ex-gratia payment. The original medical records were verified by this Court and there is no reason to doubt the bona-fides of the claimant. In such circumstances, the contention of the appellant-claimant in respect of the claim for medical expenses, has to be accepted.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

23. Hence, award of Rs.10,000/- by the Tribunal in respect of the medical expenses is set aside and the entire sum of Rs.54,280/- is awarded and the award of Rs.5,000/- by the Tribunal in respect of the injuries sustained by the claimant, is confirmed. In all, the appellant-claimant is entitled to a compensation of Rs.59,280/- (Rupees fifty nine thousand two hundred and eighty only), with interest at 7.5% per annum from the date of claim petition till the date of payment.

24. The appeal is allowed to the extent indicated above. No costs.

cs/ts

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1)The Additional District
Judge-cum- Chief Judicial Magistrate
Motor Accidents Claims Tribunal
Cuddalore. (with records)

2)The Record Keeper,
V.R. Section,
High Court, Madras.

+ 1 cc to Mr. R. Yashodvaradhan, Advocate SR No. 25585

AKM(CO)
SR/30.8.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/